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ABSTRACT

An overview is presented of the political struggle for equal rights for women athletes. Discussed is the role of the National Collegiate Association for Athletics (NCAA), which has been against increased intercollegiate and interscholastic athletic opportunities for women. The genesis of the Fourteenth Amendment (Title VII of the Civil Rights Act of 1964) prohibiting discrimination based on sex is also discussed, and subsequent court litigation over rulings peripheral to the intent of Title VII are recounted. Descriptions are given of the gradual polarization of points of view on womens' athletics, and the growth of opposition in the federal government to affirmative action in cases involving civil rights. It is pointed out that an increasing tendency to view athletic programs as corporate sports and business enterprises rather than educational experiences is detrimental to womens' athletic programs. (JD)

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POLITICAL BACKLASH AND IMPLICATIONS TO THE WOMEN'S CIVIL RIGHTS MOVEMENT FOCUSING ON SPORT AND ATHLETIC OPPORTUNITIES FOR WOMEN.

Political backlash could effectively decrease the recent acceleration over the last ten years of women's sport and athletic participation. A fact-finding mission on the status of women was launched in 1961 when President John F. Kennedy established the President's Commission on the Status of Women. Results of the study indicated that women did not share equal opportunity and benefits with men in the United States.

In the years that followed, legislation was passed for the purpose of correcting the situation and bringing women the privileges and responsibilities of equal partnership with men.[1] States and counties all over the nation

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also established fact-finding commissions which resulted in increased public awareness about the unique problems of women of all ages, race, and social class. Both federal and state legislatures passed measures to make laws more equitable for women. The purpose of various pieces of legislation was to correct and remove social barriers that made women second-class citizens.

The legislation most frequently used in sex discrimination cases was the equal protection clause of the Fourteenth Amendment; Title VII of the Civil Rights Act of 1964 as amended that prohibited discrimination based on sex in hiring, firing, promotion, wages and classification; Executive Order 11246 that prohibited discrimination in employment, and Title IX.[2, 3]

In 1972 the United States Congress passed the Equal Rights Amendment (ERA)[4] that would require approval by two-thirds of the states if it were to become an amendment to the constitution. Several states not only approved the federal ERA, but passed similar state laws the same year. In June 1972, Title IX of the Education Amendments was passed.

Guidelines implementing Title IX were not approved by Gerald Ford, President of the United States, and Congress until the summer of 1979 and final guidelines for sex equity in athletic were not adopted until 1979. In regard to athletics, the law came to require educational institutions to provide 'a selection of sports and a level of competition that effectively accommodate the interest and abilities of both sexes.' This included

comparable equipment and supplies, travel and per diem allowances, opportunity to receive coaching and academic tutoring, publicity, scheduling of game and practice times, scholarship aid, medical, housing and dining facilities.

The National Collegiate Association for Athletics (NCAA) and state high school associations were the chief antagonists toward all aspects of Title IX that might lead to increased intercollegiate and interscholastic athletic opportunity for women.[5]

Women physical educators in higher education for many years had opposed high-level intercollegiate athletics for women and even the participation of women athletes in the Olympic Games. But, in 1960 Doris Duke Cromwell donated money to fund various coaching clinics for upgrading the quality and expertise of women coaches. (Gerber, et al, 1974) By 1971 various groups of women, but particularly those from the National Association of Girls' and Women's Sports (an association within the American Association of Health, Physical Education and Recreation), formed the Association of Intercollegiate Athletics for Women (AIAW) for the purpose of providing intercollegiate athletic events for women.

The AIAW did not wish to emulate the NCAA; it wanted to make athletics an educational rather than monetary experience for women. A major policy retained from the past was that women receiving athletic scholarships could not participate in AIAW-sponsored contests because the AIAW was philosophically opposed to women receiving such scholarships. The scholarship policy was changed in 1973 when some women and their coach

charged that AIAW policy discriminated against women athletes. Much to the surprise and consternation of women physical educators, in Kellmeyer v. NEA, AAHPER, and AIAW the court held the policy to be discriminatory and the AIAW was forced to change it. The majority of women physical educators were upset because they believed that women's sports would become corrupt and the same mistakes would be made as in men's athletic programs. (Gerber, et al, 1974) When regulations to Title IX were released in 1975, many institutions began offering athletic scholarships for women by fall of 1976.

The year 1976 was a breakthrough one for providing an expansion of opportunities for women. They entered schools of law, medicine, and architecture in substantially increasing numbers. Military academies accepted women for the first time, and women became eligible to compete for Rhodes Scholarships.

The fledgling AIAW, in overseeing women's competition, strove to solve numerous problems and arrive at workable policies. The mantle of leadership fell on its shoulders, not because most women physical educators and coaches had planned to play this role, but because of the widespread influence of the women's civil rights movement. This movement was supported by people from women's commissions at national, state and county levels, the National Organization for Women (NOW)[6] and the Women's Equity Action League (WEAL).[7]

Although sportswomen such as Billie Jean King endorsed passage of the ERA and supported Title IX, most women physical educators were not particularly aware of or sympathetic to the women's equity movement in society; many felt frustration that they were being pulled in a direction in which they did not desire to go.

The interpretation of Title IX became clear: if young men were entitled to athletic scholarships, young women would have to be offered the same opportunity. Otherwise the institutions concerned would not be in compliance with the law. Once young women athletes experienced benefits of financial aid and other advantages, they were quick to appreciate the opportunity and viewed the changes as positive. Once women coaches benefited from increases in salaries, the use of better facilities, equipment and services, they were reluctant to roll back the clock to the way things were.[8, 9, 10] For example, in 1977-78 a woman coach at a large western university coached the women's softball and volleyball teams, and taught classes in the PE department -- all for a salary of $16,000. Now, the same woman coaches softball only and is paid $23,000. (Gillman, 1982)

The NCAA, as far back as 1972, had fought to have 'revenue producing sports' exempt from Title IX. Recently, the NCAA began a bold move to assume control of women's athletic competitions, an action that could destroy the relatively young AIAW.[11] (Fields, 1981) The AIAW by 1979 had grown to such an extent that it had felt strong enough to leave the

umbrella provided by AAHPERD to become an autonomous organization.

In 1981, the NCAA, which historically had never been interested in the development of women's competitive athletics and had bitterly fought Title IX in court and at Congressional hearings in 1974, determined that it would offer women's intercollegiate events in several sports. This wealthier and more established organization could offer greater financial support to women athletes in travel to and from tournaments. Other factors influencing the merger were problems of inflation and accelerating athletics costs. College presidents realized that having one organization sponsor both men's and women's tournaments was more economically attractive than having their universities pay dues to two organizations.

In the power struggle that ensued, the NCAA was able to corner key television contracts which left the fledgling AIAW devoid of their potential source of revenue. In spring 1982 the future looked bleak for the survival of the AIAW. Since AIAW had cut its ties with the umbrella organization of AAHPERD, there was no large organization to come to its defense. The AIAW attempted to file suit against the NCAA, charging that it was a monopoly, but this was unsuccessful.

A trend toward a new conservatism was evidenced in 1980 by the election of Ronald Reagan as President of the United States. (WEAL, Washington Report, 1982) (Fields, 1982) He and his wife were the first president and first lady to oppose passage of the ERA. He advocated diminishing the

federal government's role in enforcement of civil rights through affirmative action plans. Reagan appointed as heads of executive agencies persons who were not in support of affirmative action plans. They began to unravel social programs that had been conducted over a thirty year period.

During the 1970s, many more women university students began to participate in athletics. In 1971-72, before Title IX, the AIAW had 278 member institutions. In 1980, before the NCAA created a women's sports program, the AIAW had 971 member institutions with a total of 92,243 female participants. Women's participation in intercollegiate athletics had increased 250 percent since 1972.

Despite this increase, many universities failed to comply with Title IX. In 1977, the Office for Civil Rights of the US Department of Education, which enforces Title IX, estimated that about 20 percent of the complaints filed under the equal opportunity law concerned athletics. In late 1980, athletics complaints made up between 35 percent and 50 percent of the Office for Civil Rights' (OCR) caseload. Complaints about the athletics programs of twenty-six universities were filed with the OCR in 1981. In 1980, thirteen complaints had been made about ten other universities; twenty-one universities were charged in 1979, and twenty-six in 1978. (In the Running, 1980)

Enforcement of Title IX had never been good. In 1980, when Reagan took office, OCR had an athletics caseload of 133 complaints about more than 80 colleges and universities. Complaints about five universities

had been pending with the OCR since 1973. Prior to 1977, fewer than six athletics complaints per year had been made, and yet by 1977 the Office for Civil Rights had not yet reported any findings from investigation of these early complaints.

In 1974 the Women's Equity Action League and other civil rights groups filed a suit against the federal government for, in part, failure to enforce Title IX. This lawsuit resulted in a 1977 court order requiring the OCR to respond to individual complaints and to initiate overall investigations of school compliance under Title IX within specified timeframes. By March 1982, however, the OCR had reported on investigations of only eight of the 80 universities whose athletics programs were on that agency's caseload. In March 1982, lawyers for WEAL brought a contempt of court charge against the OCR, claiming that the agency missed deadlines for carrying out and completing investigation of complaints about 90 percent of the time. The Judge, while declining to find the agency in contempt, ordered both sides in the dispute to arrive at an early consent agreement about enforcement timeframes.

After March 1982, the OCR under the Reagan administration began to issue letters of finding in university athletics cases much more rapidly. Between 1972, when Title IX was passed, and 1980, eight letters had been sent; but between March and May 1982, twenty-two were issued.

The OCR, however, did not find any of the universities in violation of Title IX, even though OCR investigators had found significant disparities

in opportunity for male and female athletes at these institutions. (Hogan, 1982) Such evidence of slow and ineffective enforcement caused many civil rights supporters to worry that women athletes would be less likely to file complaints to solve their discrimination, and that this in turn would allow administration officials critical of Title IX to claim the law was no longer needed because so few complaints had been filed. Despite the OCR's minimal effort in promoting sex equity at these universities, however, many other institutions had voluntarily upgraded their women's athletics programs to the point where women's teams were an integral part of the athletics department and the school.

Once the success of the women's sport equity movement was apparent, the NCAA was interested in assuming control of women's sports. But it was willing to offer women no more than 25 percent of the leadership roles in its governing structure. In being absorbed by the NCAA, women went from being 100 percent in control to more than 25 percent. On campuses the director of women's athletics was most likely under the supervision of the male athletic director. Considering how hostile the directors had been to the idea of giving parity to women's programs, it appeared that women had lost another round in chances for being in policy-making positions. It remains to be seen whether women will be more than tokens in the NCAA structure. (Hogan, 1980)

One of the most resistant elements to women's equity in sport programs during the 1970s had been the state high school athletic associations.

They were sued in court 19 times for sex discrimination and charged with holding secret meetings, limiting girls' access to athletic competition, and excluding women from policy-making positions. (Duffy, 1981) The problem was that state associations were considered to be non-profit and this gave them complete control over their finances. Most governing councils of the state associations were composed of male school administrators; women had little opportunity to influence decisions. This factor indicates that women increased their effectiveness and participation in sport when the situation was under the purview of federal legislation. Without federal intervention, they appeared to make little progress. It appears a serious matter for women's athletic programs that Reagan administration plans to block passage of the ERA, destroy the effectiveness of Title IX, and hinder the proper functioning of affirmative action plans.

In August 1981, George Bush, Vice President of the United States, was appointed by the President to chair a Presidential Task Force on Regulatory Relief. The Bush Task Force proposed to review the way the Office for Civil Rights interpreted Title IX when it investigated complaints against university athletics programs. The Vice-President's initial remarks indicated that he was unfamiliar with Title IX's enforcement requirements. He announced publicly that the law called for equal expenditures for men's and women's sport programs, when Title IX actually calls for comparable expenditures based on percent of participation. (Nupp, 1982)

A related threat to Title IX came from Terrell H. Bell, US Secretary of Education, whose department is supposed to enforce US education laws. Bell, however, proposed amending Title IX regulations so that educational institutions would no longer have to sign 'assurance forms,' or papers stating that schools accepting federal funds will forbid sex discrimination in their programs. According to Bell, the forms place an unnecessary paperwork burden on educational institutions and are a 'duplicative' means of enforcement.

Supporters of Title IX, however, lost no time in pointing out that an assurance form, a single piece of paper, serves to remind schools accepting federal funds of their obligations to women students.

In addition, Bell proposed to exempt from Title IX coverage about 350 universities whose only federal aid comes from guaranteed student loans. Bell wished to exempt from Title IX coverage one-thousand more universities whose only federal money comes from grants to needy students. The Justice Department, however, declined to go along with Bell's request, as there appeared to be no legal authority to do so.[13]

Orrin Hatch, Republican Senator from Utah, introduced a number of bills to dismantle legislation that has broadened educational opportunity for women during the last decade. He proposed a constitutional amendment that would forbid government mandatory or voluntary affirmative action. Hatch's Human Federalism Amendment (S.J. 110) would give federal and

state governments power to restrict, if not outlaw, all abortions. He introduced a bill (S. 1361) to exclude Title IX coverage from all employees and from those students taking programs or courses not funded directly by the federal government. Hatch withdrew his Title IX bill only after similar proposals were under consideration by the US Supreme Court and by Bell's Education Department. [14, 15] (Alliance Update, 1981) (Common Cause, 1981) (Congressmen's Caucus Update, 1982) (Hook, 1981)

Claudine Schneider, U.S. Representative from the state of Rhode Island, introduced a counter bill in the House of Representatives that would reaffirm the commitment of Congress to the original intent of Title IX. One-hundred and five house members have signed on to this resolution.[16]

Points of view appear to be polarizing. One view is that athletic programs of Division I caliber in NCAA tournaments are corporate sports and an acknowledged business enterprise. Such programs have to generate income. Allegedly, the main function of the athlete is to be an athlete first and a student second. Winning becomes important because winning teams bring in greater alumni support and sell more tickets. A winning team is a public relations arm of the university and athletics are viewed as mass entertainment.

On the other end of the continuum is the view that sport and athletics are an educational experience. The athletic and sport enterprises on a campus use tax money; state financed facilities have tax supported scholarship programs and charge athletic fees to all students regardless of sex. Therefore, many people believe that regardless of gender, the student should receive equitable benefits and services. It took federal legislation to implement social change in this direction. For example, in 1971 UCLA's

women's athletic budget was $17,000, but by 1978 it was $450,000. (National Women's Advisory Council on Women's Educational Programs, 1981) Without federal legislation and court decisions, it appears that only males would have continued to be recipients of benefits derived from sport participation. (Atkins, 1982)

Observation and documentation of the struggle now taking place offer a laboratory to study the phenomena of social change in process. Causative agents for the remarkable changes that occurred in the 1970s were civil rights legislation, the drive of women's groups such as NOW and WEAL, and the willingness of individuals to use court action to meet out to both sexes a more equitable distribution of sport programs. Athletic scholarships were seen as opportunities to enable disadvantaged females to secure an education, just as they had aided young men in this way. Facilities, uniforms, and coaching experiences that had been largely denied women became available. Gross inequities in salaries of male and female coaches and teachers were reviewed and frequently the gaps between them were closed. Women moved into coaching, policy-making, and administrative positions. Women's games were reported on in the sports pages, in contrast to the 1970s, when the media rarely mentioned women's sports.

As of spring 1982, it appears that the support of three additional states needed to make the ERA an amendment to the US Constitution will not be forthcoming. In addition, one Federal District Court judge in

Idaho held that a three-year time extension for passage was illegal; the extension issue is now pending before the US Supreme Court. In addition to these setbacks, some states appear to be in favor of rescinding prior approval of the ERA. The President has tended to place as key administrators of program persons opposed to the missions of civil rights agencies or organizations.[17] Title IX is under attack in all three branches of the US government. There appears to be an administration directive to weaken Title IX, which made possible the growth of women's sports.

There is evidence that there is a concerted effort to halt the process of affirmative action and to limit the jurisdiction of agencies that monitor compliance with federal legislation. The NCAA has been successful in taking over control of women's competitive athletic contests without giving women proportional representation in top management positions.

When change occurs and power loss is felt by the dominant group, it appears that an across-the-board counter movement is generated for the purpose of regaining lost power and privileges. Socio-economic reasons are advanced to delimit the maintenance and the future growth of women's sports. Powerful groups in educational institutions are presenting athletics as corporate-style sports -- with the predominant goal of generating money. Women are being told they are unsuccessful at this, and therefore, deserve less. In sport endeavors, successful women athletes are viewed as aggressive and achievement-oriented, which does not accommodate the female-sex stereotype. Because of this, women's sports programs could become the focus of opposition and political backlash.

NOTES

[1]Betty Friedan discusses the work of National Organization for Women to add an amendment to the US Constitution that would legalize the equality of women under the law.

[2]Title 9 reads as follows: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under an educational program of activity receiving federal financial assistance."

Title 9 prohibits discrimination on the basis of sex in admissions, access to courses, counseling and testing, scholarships and awards, employment and access to housing and other facilities.

The regulations released in 1975 defines what the Office of Civil Rights would consider fair and equal treatment in regard to women having opportunities in sports and athletic programs.

[3]In 1979 further changes were as follows: ...HEW divided the guidelines into three areas: athletic financial assistance (scholarships); benefits and opportunities, and accommodation of interests and abilities. "The most immediate impact of the policy interpretations will undoubtedly be the need for many colleges to increase scholarship aid to female athletes in order to comply with the law. Failure to comply can lead to a loss of federal funds, which few colleges can risk...NCAA reports have shown that the overwhelming majority of football programs--81 percent--do not even support themselves, let alone other sports...HEW is seeking some kind of comparability or equivalency in the following areas. The areas are: provision of equipment, scheduling of games and practices, allocation of travel and per diem expenses, the opportunity to receive coaching, assignment of coaches, provision of medical and training services, provision of housing facilities, provision of locker room and other facilities and publicity."

[4]The text of the Equal Rights Amendment is as follows: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

Persons who fight the passage of the ERA appear to be financed by the far right. The ERA, if passed, would declare unconstitutional a host of state laws that discriminate on the basis of sex.

[5]"Panic in the male locker rooms centers around Title 9, which stands to cause the most changes in men's programs of any legislation thus far. Crying that the Title 9 regulations have produced a crisis in intercollegiate athletics. Walter Byers, president of the National Collegiate Athletic Association (NCAA), rallied his member institutions to support large-scale lobbying to have athletics eliminated entirely from the grasp of Title 9. When this attempt failed, the male athletic organizations got behind the amendment sponsored by Sen. John Tower, R. Texas, and aimed at exempting all revenue-producing sports from Title 9. In June, The Tower Amendment was defeated in conference. The regulations were officially released for comment shortly after that, with no major concessions to male athletic groups...rumors are that the NCAA hasn't given up." p.77.

[6]National Organization for Women was founded in 1966 and has a current membership of 140,000 members. They support the passage of the Equal Rights Amendment, keeping abortion a matter of choice, safe and legal, equality in jobs, pay, credit, pensions, etc. to win full economic equality for women, the rights of homemakers and recognition of the economic value of the service of homemakers.

[7]WEAL has an Educational and Legal Defense Fund as well as a sport discrimination toll-free hotline (800-424-5162) where women can seek legal advice. SPRINT, under the auspices of WEAL, is a national clearinghouse of information of sex equity in sports and publishes In the Running, probably providing the most comprehensive information available on women in sport issues. Women's Equity Action League, 805 Fifteenth St., NW, Suite 822, Washington, DC 20005.

[8]In the early 1970s Women's Equity Action League filed charges with the United States Department of Labor against 250 institutions of higher education in the United States. The following areas were pointed out for investigation because of alleged sex discrimination: admission quotas to undergraduate and graduate schools, discrimination in financial assistance, hiring practices and salary differentials.

Since Title 9 was passed in 1972, participation of women in intercollegiate sports has increased 250 percent. In 1980, 35 percent of high school varsity athletes were girls. In 1972, the girls were only 7 percent of the athletes. In 1980, the average budget for a woman's athletic program was 16.4 percent, in 1972 it was 2 percent. In 1971, no colleges or universities offered athletic scholarships. Five years ago there were 5,000 and in 1982 there are 10,000. In 1978-79, 216,000 spectators attended the all-state girls' basketball tournament.

[9]"In 1970 boys outnumbered girls in interscholastic sports by 13 to one. By 1979, the difference was 2 to one."

[10]"Title 9: Effect on School Athletic Program and a Good Start." National Coalition for Women and Girls in Education, c/o Federal Education Project, 733 15th Street, NW, Washington, DC 20005.

[11]AIAW post president AIAW said, "We all know the NCAA is still in the courts fighting Title 9..."

[12]The Office for Civil Rights studies four cases where they found disparities that violated Title 9, but they ruled them in compliance anyway.

[13]"Enforcement of Civil Rights laws would be shifted to the Department of Justice under Education Secretary Terrel H. Bell's plans for dismantling his department..."

[14]Letter to the membership discussing "Title 9 Watch." Project on Equal Educational Rights: A Project of the NOW Legal Defense and Education Fund, 1112 13th Street, NW, Washington, DC 20005. This contains a reprint of S. 1361 to amend Title 9 of the Education Amendments of 1972, sponsored by Senator Orrin Hatch, R-UT.

[15]"Supporters of Hatch's amendment argue that special interest groups have abused Title 9..."

[16]H. Res. 268 states that inequalities based on sex exist such as the average working woman earns 59 cents for every dollar her male counterpart receives. It acknowledges that Title 9 has been effective in providing women with equal educational opportunities, and that regulations that bring about corrective action are not overly burdensome (as charged by Bell, Bush and Hatch). Records do not have to be kept if the college or institution is in compliance with Title 9. Peer Title 9 Watch, Jan. 1982.

H. Res. 268 resolved that guidelines relating to Title 9 should not be repealed or altered in a manner which would deny any person equal access to education. (January 1982). Shortly after this, Senator Hatch postponed hearings on Title 9 indefinitely. It would appear that this resolution may have been effective in halting one move to destroy Title 9.

[17]The chair of the Leadership Conference on Civil Rights, Benjamine Hooks said that the Reagan administration gives low priority to civil rights.

President Reagan appointed Sam Hart to head the US Civil Rights Commission who opposed the ERA and civil rights of other groups. (When it became known that Mr. Hart owed back taxes, he withdrew his name so as not to embarrass the President. It remains to be seen who will be the new appointee).

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